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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Martin D Moynihan
PRTSI Inc
P O Box 16446
Arlington, VA 22215

EXAMINER	
CHEN, CATHERYNE	
ART UNIT	**PAPER NUMBER**
1655	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/579,842	PINNEY, VIRGINIA RUTH	
	Examiner	Art Unit	
	Catheryne Chen	1655	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *07 June 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *See Continuation Sheet* is/are pending in the application.

4a) Of the above claim(s) *2,3,105,114,126,132,134-144,146,149,153,159* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,4,6,13,18,23,27-29,43,45,46,49,50,53,59,68,75,80,84,88,103,116,126 and 155-158* is/are rejected.

7)☒ Claim(s) *6,13,18,23,27-29,43,45,46,49,50 and 53* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *May 17, 2006* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *May 17, 2006*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Continuation of Disposition of Claims: Claims pending in the application are 1-4,6,13,18,23,27-29,43,45,46,49,50,53,59,68,75,80,84,88,103,105,114,116,126,132,134-138,140-144,146,149,153 and 155-159.

DETAILED ACTION

Currently, Claims 1-4, 6, 13, 18, 23, 27-29, 43, 45-46, 49-50, 53, 59, 68, 75, 80, 84, 88, 103, 105, 114, 116, 126, 132, 134-138, 140-144, 146, 149, 153, 155-159 are pending. Claims 1, 4, 6, 13, 18, 23, 27-29, 43, 45-46, 49-50, 53, 59, 68, 75, 80, 84, 88, 103, 116, 126, 155-158 are examined on the merits.

Election/Restrictions

Applicant's election of Group I (Claims 1, 4, 6, 13, 18, 23, 27-29, 43, 45-46, 49-50, 53, 59, 68, 75, 80, 84, 88, 103, 105, 114, 116, 126, 155-159), the species frankincense, extract of roses, extract of Canaga, extract of Piper, and extract of Bursera, vanillin, alkyl, viscous fluid, in the reply filed on June 7, 2007 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 2, 3, 105, 114, 126, 132, 134-144, 146, 149, 153, and 159 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected group and species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on June 7, 2007.

Claim Objections

Claims 6, 13, 18, 23, 27, 28, 29, 43, 45, 46, 49, 50, 53 are objected to because they all depend from non-elected Claim 2. If Claim 2 were cancelled, a rejection under 35 U.S.C. 112, second paragraph would be required. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 103, 116 are rejected under 35 U.S.C. 102(b) as being anticipated by Kure (JP 04149135 A).

Kure teaches a perfume composition of essential oil of boswellia, ylang-ylang, black pepper, burseracea, rose. Oils are viscous and serve as carriers in pharmaceutical compounds.

Claims 1, 103, 116 are rejected under 35 U.S.C. 102(b) as being anticipated by Lambrecht et al. (US 2001/0005711 A1).

Lambrecht et al. teaches fragrance of essential oils of orange oil, lavindin oil, spearmint oil (paragraph 0060). Oils are viscous and serve as carriers in pharmaceutical compounds.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* v. *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1, 4, 6, 13, 18, 23, 27, 59, 68, 75, 80, 84, 88, 103, 116 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sott (US 2002/0081341 A1).

Sott teaches essential oil formulation (paragraph 0002), Black Pepper (paragraph 0060), Frankincense oils (paragraph 0102), Bursera Delpechina (0129), Rose Otto (0158), Ylang Ylang (0184-0190). Oils are viscous and serve as carriers in pharmaceutical compounds. However it does not teach the claimed concentrations.

The reference also does not specifically teach adding the ingredients in the amounts claimed by applicant. The amount of a specific ingredient in a composition is clearly a result effective parameter that a person of ordinary skill in the art would routinely optimize. "[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." In re Aller, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). Thus, optimization of general conditions is a routine practice that would be obvious for a person of ordinary skill in the art to employ. It would have been customary for an artisan of ordinary skill to determine the

optimal amount of each ingredient to add in order to best achieve the desired results. Thus, absent some demonstration of unexpected results from the claimed parameters, this optimization of ingredient amount would have been obvious at the time of applicant's invention.

Claims 1, 4, 6, 13, 18, 23, 27, 28, 29, 45, 49, 59, 68, 75, 80, 84, 88, 115, 116, 157 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sott (US 2002/0081341 A1) as applied to claims 1, 4, 6, 13, 18, 23, 27, 59, 68, 75, 80, 84, 88, 116 above, and further in view of Lambrecht et al. (US 2001/0005711 A1).

Sott teaches essential oil formulation in aromatherapy (paragraph 0002), Black Pepper (paragraph 0060), Frankincense oils (paragraph 0102), Bursera Delpechina (0129), Rose Otto (0158), Ylang Ylang (0184-0190). Oils are viscous and serve as carriers in pharmaceutical compounds. However it does not teach the claimed concentrations and vanillin.

Lambrecht et al. teaches vanilla extract in fragrances (paragraph 0013).

The reference also does not specifically teach combining frankinscense, rose, canaga, piper, bursera and vanillin together. The references do teach that they are essential oils in fragrances (see discussion above). As discussed in MPEP 2144.06:

It is prima facie obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose, in order to form a third

composition to be used for the very same purpose.... [T]he idea of combining them flows logically from their having been individually taught in the prior art.

Thus, is would be obvious to combine all of the claimed ingredients because they are taught in the reference to have the same purpose.

The references also do not specifically teach adding the ingredients in the amounts claimed by applicant. The amount of a specific ingredient in a composition is clearly a result effective parameter that a person of ordinary skill in the art would routinely optimize. "[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." In re Aller, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). Thus, optimization of general conditions is a routine practice that would be obvious for a person of ordinary skill in the art to employ. It would have been customary for an artisan of ordinary skill to determine the optimal amount of each ingredient to add in order to best achieve the desired results. Thus, absent some demonstration of unexpected results from the claimed parameters, this optimization of ingredient amount would have been obvious at the time of applicant's invention.

Claims 1, 6, 13, 18, 23, 45, 46, 49, 103, 116, 157 are rejected under 35 U.S.C. 103(a) as being unpatentable over Conklin et al. (US 6444253 B1).

Conklin et al. teaches natural flavorant oils (column 1, line 22), frankincense (column 5, line 41), black pepper, Rose Otto, Ylang-Ylang (column 6, lines 33, 38), acetaldehyde (column 12, line 67). Oils are viscous and serve

as carriers in pharmaceutical compounds. However it does not teach the concentrations.

The reference also does not specifically teach adding the ingredients in the amounts claimed by applicant. The amount of a specific ingredient in a composition is clearly a result effective parameter that a person of ordinary skill in the art would routinely optimize. "[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." In re Aller, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). Thus, optimization of general conditions is a routine practice that would be obvious for a person of ordinary skill in the art to employ. It would have been customary for an artisan of ordinary skill to determine the optimal amount of each ingredient to add in order to best achieve the desired results. Thus, absent some demonstration of unexpected results from the claimed parameters, this optimization of ingredient amount would have been obvious at the time of applicant's invention.

Claims 1, 4, 6, 13, 18, 23, 27, 43, 45, 49, 50, 53, 59, 68, 75, 80, 84, 88, 103, 116, 156, 157, 158 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bramwell et al. (US 3884842) as applied to claims 1, 4, 6, 13, 18, 23, 27, 59, 68, 75, 80, 84, 88, 103, 116 above, and further in view of Sott (US 2002/0081341 A1).

Sott teaches essential oil formulation in aromatherapy (paragraph 0002), Black Pepper (paragraph 0060), Frankincense oils (paragraph 0102), Bursera

Delpechina (0129), Rose Otto (0158), Ylang Ylang (0184-0190). Oils are viscous and serve as carriers in pharmaceutical compounds. However it does not teach the claimed concentrations and benzyl benzoate and amyl salicylate.

Bramwell et al. teaches perfume compositions of odoriferous aldehydes, benzyl benzoate, amyl salicylate (column 3, lines 36, 44).

The references also do not specifically teach combining the claimed ingredients together. The references do teach that the ingredients are used in perfumes (see discussion above). As discussed in MPEP 2144.06:

It is prima facie obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose, in order to form a third composition to be used for the very same purpose.... [T]he idea of combining them flows logically from their having been individually taught in the prior art.

Thus, is would be obvious to combine the claimed ingredients together because they are taught in the reference to have the same purpose.

The references also do not specifically teach adding the ingredients in the amounts claimed by applicant. The amount of a specific ingredient in a composition is clearly a result effective parameter that a person of ordinary skill in the art would routinely optimize. "[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." In re Aller, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). Thus, optimization of general conditions is a routine practice that would be obvious for a person of ordinary skill in the art to employ. It would have been customary for an artisan of ordinary skill to determine the

optimal amount of each ingredient to add in order to best achieve the desired results. Thus, absent some demonstration of unexpected results from the claimed parameters, this optimization of ingredient amount would have been obvious at the time of applicant's invention.

Conclusion

No claim is allowed.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Catheryne Chen whose telephone number is 571-272-9947. The examiner can normally be reached on Monday to Friday, 9-5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on 571-272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Catheryne Chen
Patent Examiner
Art Unit 1655

/Susan Hoffman/
Primary Examiner, Art Unit 1655
August 9, 2007